UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -X
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MARCEL C. BRISTOL,   :

                               :   ORDER
           Plaintiff,   :   09-CV-5544 (JFB)(AKT)
                               :

             – against –   :

                               :

QUEENS COUNTY ET AL.,   :

                               :

          Defendants.   :

                               :
- -X

JOSEPH F. BIANCO, District Judge:

On December 14, 2009, *pro se* plaintiff Marcel Bristol ("plaintiff") filed the complaint in this action against Queens County, the Queens County District Attorney's Office, Queens County District Attorney Richard Brown, Daniel O'Brien, Detective Sean Ring, Assistant District Attorney Quynda Fleming, Assistant District Attorney Neil Gitin, Detective Oneil Miller, Inspector Ysento, Police Sergeant Frank Harvath, the New York City Police Department Detectives John Does 1-4 (collectively, "Queens County defendants"), Nassau County, the Nassau County District Attorney's Office, Nassau County District Attorney Kathleen Rice, Assistant District Attorney Lauren Doddato, Assistant District Attorney Jane Doe, Detective Ronald R. Schepis, and Detective John Harvey (collectively, "Nassau County defendants").

On June 7, 2010, the Nassau County defendants filed a motion to dismiss plaintiff's complaint. Plaintiff filed an opposition on July 7, 2010, and the Nassau County defendants filed a reply on August 4, 2010. By Order dated August 26, 2010, the Court referred the Nassau County defendants' motion to dismiss to Magistrate Judge Tomlinson for a Report and Recommendation. On February 28, 2011, Magistrate Judge Tomlinson issued a Report and Recommendation,

recommending that the Nassau County defendants' motion to dismiss be granted, and affording plaintiff leave to file an amended complaint. By Order dated January 3, 2012, the Court adopted the Report and Recommendation in its entirety.

Plaintiff filed an amended complaint on January 30, 2012, and subsequently filed a second amended complaint on February 27, 2012. On May 31, 2012, the Nassau County defendants filed a motion to dismiss plaintiff's second amended complaint. Plaintiff filed an opposition on June 18, 2012, and the Nassau County defendants filed a reply in further support of their motion to dismiss on July 5, 2012. By Order dated July 16, 2012, the Court referred the Nassau County defendants' motion to dismiss plaintiff's second amended complaint to Magistrate Judge Tomlinson for a Report and Recommendation.

On February 27, 2013, Magistrate Judge Tomlinson issued a Report and Recommendation (the "R&R"), recommending the following: (1) that plaintiff be directed to remove the Nassau County District Attorney's Office from the caption of any subsequent filings, since that defendant had previously been dismissed with prejudice (in the prior Report and Recommendation that the Court adopted by Order dated January 3, 2012); (2) that the Nassau County defendants' motion be granted with respect to plaintiff's municipality claims, as well as her claims asserted against the Nassau County defendants in their official capacities; (3) that all claims against District Attorney Rice be dismissed, with prejudice; (3) that the Nassau County defendants' motion be denied with respect to plaintiff's causes of action based on cruel and unusual punishment, double jeopardy, false arrest, illegal search and seizure, and malicious prosecution; (4) that plaintiff's fabrication of evidence and Section 1983 conspiracy claims be permitted to proceed (because although these claims were not specifically addressed by the Nassau County defendants in their motion to dismiss, plaintiff, at this stage of litigation, has sufficiently pled those claims); and (5) that the Nassau

County defendants' motion to dismiss on immunity grounds (pertaining to defendants Schepis, Harvey, ADA Doddato, and ADA Doe) be denied. The R&R further instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (*See* Report and Recommendation dated Feb. 27, 2013, at 40-41.) As indicated by the docket sheet, a copy of the R&R was mailed to plaintiff by Magistrate Judge Brown's Chambers on February 27, 2013. (*See* ECF No. 135.) No objections have been filed to date, although the date for filing any objections has expired.

A district judge may accept, reject, or modify, in whole or in part, the findings and recommendations of the Magistrate Judge. *See DeLuca v. Lord*, 858 F. Supp. 1330, 1345 (S.D.N.Y. 1994); *Walker v. Hood*, 679 F. Supp. 372, 374 (S.D.N.Y. 1988). As to those portions of a report to which no "specific written objections" are made, the Court may accept the findings contained therein, as long as the factual and legal bases supporting the findings are not clearly erroneous. *See* Fed. R. Civ. P. 72(b); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Greene v. WCI Holdings Corp.*, 956 F. Supp. 509, 513 (S.D.N.Y. 1997).

Having conducted a review of the full record and the applicable law, and having reviewed the R&R for clear error, the Court adopts the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Even under a *de novo* standard, the Court adopts the R&R in its entirety. Accordingly, IT IS HEREBY ORDERED (1) that plaintiff shall remove the Nassau County District Attorney's Office from the caption of any subsequent filings; (2) that the Nassau County defendants' motion is granted with respect to plaintiff's municipality claims, as well as her claims asserted against the Nassau County defendants in their official capacities; (3) that all claims against District Attorney Rice are dismissed, with prejudice; (3) that the Nassau County defendants' motion is denied with respect to plaintiff's causes of action based on cruel and unusual

punishment, double jeopardy, false arrest, illegal search and seizure, and malicious prosecution; (4)

that plaintiff's fabrication of evidence and Section 1983 conspiracy claims shall proceed; and (5)

that the Nassau County defendants' motion to dismiss on immunity grounds (pertaining to

defendants Schepis, Harvey, ADA Doddato, and ADA Doe) is denied.

                  SO ORDERED.

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JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: March 18, 2013
       Central Islip, New York